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Paper No. 13

PERKINS COIE LLP  
PATENT-SEA  
P.O. BOX 1247  
SEATTLE WA 98111-1247

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MAR 29 2004

In re Application of  
Bradford Evan Gliner et al.  
Application No. 09/978,134  
Filed: October 15, 2001  
Attorney Docket No. 337348021US  
Title: SYSTEMS AND METHODS FOR  
AUTOMATICALLY OPTIMIZING  
STIMULUS PARAMETERS AND  
ELECTRODE CONFIGURATIONS FOR  
NEURO-STIMULATORS

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition filed March 18, 2004, pursuant to 37 C.F.R. §1.137(b<sup>1</sup>), to revive the above-identified application.

A grantable petition pursuant to 37 CFR 1.137(f) must be accompanied by:

- (1) Notification of the filing of an application in a foreign country or under a multinational treaty that requires 18 month publication<sup>2</sup>;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
- (3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

On March 18, 2004, the instant petition was filed with the Office. Petitioner states that the "petition is being filed prior to the issuance of the Notice of Abandonment. Under current USPTO practice, further information regarding the abandonment is not required<sup>3</sup>." Unfortunately, such is not the case. There are two rather critical pieces of information which are indeed required.

<sup>1</sup> The petition is properly treated as a petition under 37 C.F.R. §1.137(f).

<sup>2</sup> See PTO/SB/36 and paragraph on PTO/SB/64a for further information. Both may be downloaded at <http://www.uspto.gov/web/forms/index.html>.

<sup>3</sup> Petition, page 2.

First, although the petition is filed under 37 C.F.R. §1.137(b), the facts set forth in the first paragraph on the first page of the petition, coupled with the inclusion of the notice of rescission of previous nonpublication request, make it clear that the Petitioner intended to file a petition under 37 C.F.R. §1.137(f). However, nowhere in the petition is it set forth that the instant nonprovisional application is the subject of an application filed in either a foreign country or under a multinational agreement.

Secondly, notification of the filing of the foreign or international application did not accompany this filing.

As such, petitioner has not met the first requirement above.

In view of the foregoing, this petition is **DISMISSED**. Any response to this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request must include a cover letter entitled "Renewed Petition under 37 CFR 1.137(f)." Petitioner must first state that a foreign or international application has been filed, and then submit the date which the foreign or international application was filed.

Petitioner is reminded that if an applicant makes a nonpublication request and then rescinds the nonpublication request before or on the date a counterpart application is filed in an eighteen-month publication country, the application will be treated as if the nonpublication request were never made, and any petition fee would be refunded.

The reply to this letter may be submitted by mail<sup>4</sup>, hand-delivery<sup>5</sup>, or facsimile<sup>6</sup>.

The reply should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner. The Petitioner may wish to consider telephoning the undersigned at the number provided below to confirm that the documents were delivered to the undersigned. Please note that the delivery process within the PTO can take as much as three weeks.

**The application file will be retained in the Office of Petitions for two (2) months.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.

  
Paul Shanoski  
Attorney  
Office of Petitions  
United States Patent and Trademark Office

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4 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

5 Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.

6 (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned.